IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 17904 of 2004

Between:

1 Syed Gafoor, S/o.Late Syed Ghouse Saheb,
R/o.1-1, Main Road, Diguvapeta,
Ramasamudram, (V&M), Chittoor Dist.
2 Smt.Ameena Bee, W/o.Late Syed Ghouse Saheb,
R/o.1-1, Main Road, Diguvapeta,
Ramasamudram, (V&M), Chittoor Dist.
3 Fameeda Bee, W/o.Late Syed Khaleel,
R/o.1-1/B, Main Road, Diguvapeta,
Ramasamudram, (V&M), Chittoor Dist.
4 Syed Habeeb, S/o.Late Syed Ghouse Saheb,
R/o.1-82, Main Road, Diguvapeta,
Ramasamudram, (V&M), Chittoor Dist.
5 Syed Hameed, S/o.Late Syed Ghouse Saheb,
R/o.1-1, Main Road, Diguvapeta,
Ramasamudram, (V&M), Chittoor Dist.
6 Syed Muneer, S/o.Late Syed Ghouse Saheb,
R/o.1-1, Main Road, Diguvapeta,
Ramasamudram, (V&M), Chittoor Dist.
7 V.Baba Saheb, S/o.Late V.Jailoo Saheb,
R/o.1-70, Main Road, Diguvapeta,
Ramasamudram, (V&M), Chittoor Dist.

... PETITIONERS

AND

1 The General Manager, Bharat Petroleum Corporation Ltd.,
4 and 6 Curriumbhoy Road, Ballad Estate,
Mumbai-400001.

2 The District Collector, Chittoor Dist.
3 The Dist.Revenue officer, Chittoor.
4 The Revenue Divisional officer, Madanapally.
5 The M.R.O., Ramasamudram, Chittoor Dist.
6 C.M.Ramesh Kumar, S/o.C.Subbaiah,
R/o.Main Road, Near Checkpost,
Ramasamudram (V&M) Chittoor Dist.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate order or direction more particularly one in nature of writ of mandamus declaring that the action of the respondents in granting license to the 6th respondent for running the petroleum outlet in Sy.No.115/4, Diguvapeta, Ramasamudram (V&M) is illegal, arbitrary, without jurisdiction and contrary to the Rules and Regulations and consequently direct the respondents 1 to 5 not to further grant any such permission for running the petroleum business in the residential area.

Counsel for the Petitioner: MR.P.R.PRASAD

Counsel for the Respondent No.1: Mr.P.V. Sanjay Kumar, Standing Counsel for Petroleum Corporation.

Counsel for Respondents 2 to 5: Government Pleader for Revenue

Counsel for Respondent No.6: Mr.C.A.R. Seshagiri Rao.

The Court at the admission stage made the following:

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Order:

1. The petitioners are residents of Ramasamudram Village in Chittoor District. It is a Mandal Headquarter. The petitioners are having permanent houses abutting the road. There is a vacant site of about 40 cents in S.No.115/4 situated between the houses. The sixth respondent proposed to establish a petroleum outlet in that site facing North. The houses of the petitioners are towards East and West. The petitioners are contending that after coming to know about the proposal of the sixth respondent to establish a petroleum outlet they raised an objection by sending representations to the concerned authorities, including respondents 1 to 5. But, they did not take any steps to stop the establishment of the petroleum outlet. The permissions, if any, obtained by the sixth

respondent are not valid and they are not in accordance with the guidelines issued in G.O.Ms.No.969 dated 20-11-1978. The sixth respondent did not obtain permission from the Director of Town Planning, Director of Explosives, no objection certificate from the District Authority under the Petroleum Act, the local panchayath etc., and the erection of the tank and other structures are not in accordance with the norms prescribed under the rules and guidelines. The petitioners therefore approached this Court through this writ petition seeking to declare that the action of the respondents 1 to 5 in granting licence to the sixth respondent for establishment and running of the petroleum outlet as illegal, arbitrary and without jurisdiction and contrary to the rules and regulations and consequently to direct the respondents 1 to 5 not to further grant any permissions for running the petroleum outlet in the residential area of the petitioners.

2. The sixth respondent filed a counter-affidavit resisting the petition with the following averments in brief:

3. It is true that the petitioners are residents of Ramasamudram Village. The first respondent after considering his candidature and on satisfying with the proposed site and other stipulations offered to allot the retail outlet in his favour. He obtained approval from the Fire Department, Gram Panchayath, the Director of Explosives, the District Authority etc., and made the structures and the installations in strict compliance of the conditions and the directives given in the approval letters. After complying with all the conditions, the third respondent on the basis of the report submitted by the fourth respondent granted No Objection Certificate on 29-3-2004. There is no need to obtain the permission from the Director of Town Planning, since the outlet is being set up in a remote rural area. He completed all the erections and the structures. The petitioners are approaching various authorities to cause obstruction for the installation of the petroleum outlet but they could not get it stalled. He spent huge amounts for the establishment of petroleum outlet and at this juncture the petitioners with a mala fide intention resorted to approach this Court by

suppressing the material facts. There is no locus standi for the petitioners to file the present writ petition. The writ petition is misconceived, therefore, it is liable to be dismissed.

4. The point for consideration is whether the petitioners are entitled for the writ of mandamus as prayed for?

Point:

5. The petitioners are residents of Ramasamudram Village. They are contending that as the sixth respondent is establishing the petroleum outlet in the residential locality, it is likely to effect the inhabitants of that locality. Therefore, they tried in vain to stall the erection of the outlet, but the concerned authorities after physical inspection of the site and after collecting the opinion of the majority of that locality accorded necessary permissions and in pursuance of that, the sixth respondent established the petroleum outlet.

6. The photographs filed by the sixth respondent are indicating that the work has been completed as per the specifications given by the concerned authorities at the time of according permissions. The petitioner produced a copy of the No Objection Certificate issued by the Collector, Chittoor District, the Chief Controller of Explosives, The Divisional Fire Officer, Cuddapah, the Gram Panchayath of Ramasamudram Village and the first respondent. He also filed some papers containing the signatures of the ward members of the Gram Panchayath and several people of the village mentioning that a petroleum outlet is essential for their village. The petitioners half-heartedly conceded that the sixth respondent obtained all necessary permissions, but they contended that those permissions are not valid. The learned counsel for the petitioners could not point out as to why the permissions accorded by the concerned authorities, including respondents 1 to 5, are not valid and what was the violation of the rules or guidelines issued under the Petroleum Act. There is an apprehension in the mind of the petitioners that if the petroleum outlet is established in the residential locality, it is likely to lead to fire accidents on account of the

smoke emanated from the chimneys of the respective houses and that the fumes released by the vehicles coming to the petroleum outlet are likely to affect health of the habitants of that locality. But, after carefully going through the documents filed by the sixth respondent, it is made out that he obtained all necessary permissions and the photographs filed by him are indicating that he has taken all necessary steps, including a compound wall around the site. The site in which the outlet erected is considerably a big extent of 40 cents equivalent to 1940 sq. yds. The learned counsel for the sixth respondent submitted that there is no bar for establishment of the petroleum outlet in the residential locality after taking all necessary precautions required to be taken, as per the instructions of the concerned authorities.

7. The petitioners drew the attention of this Court to Condition No.3 of the order given by the Divisional Fire Officer, Cuddapah, which reads as follows:

> **Condition No.3:** A distance of not less than 1.5 mtrs. shall be kept clear between the protected works and the edge of such enclosure wall or pit.
>
> i. The distance of 3 mtrs. shall be observed as safety distance for petroleum Class-A.

8. The learned counsel for the petitioners while relying on the said condition contended that since the sixth respondent is going to sell petroleum Class 'A' there shall be 3 mtr. distance from the compound wall of the petitioners to the underground tank and as the sixth respondent left only 4 ft. from the compound wall to the tank, it is in violation of the condition prescribed by the Fire Department, therefore, the sixth respondent is not entitled to run the outlet.

9. The word "protected works" is defined under Rule 2 (xxi) of the Petroleum Rules, 2002 and it reads as follows:

> **2.Definitions:**
>
> xxx

(xxi) “Protected works” include—

a. buildings in which persons dwell or assemble, docks, wharves, timber and coal yards, furnace, kiln or chimney and buildings or places used for storing petroleum or for any other purpose but does not include buildings or places forming part of an installation;

b. any public road or a railway line which is used exclusively as an oil siding; and

c. overhead high-tension power lines;

10. From the above definition, it is clear that the dwelling house of the first petitioner situated to the East of the site in question comes within the definition of “protected works”, therefore, it is mandatory that the sixth respondent shall maintain the distance prescribed under the petroleum rules from the wall of the dwelling house situated on the eastern edge of the tank. Since the petitioners are contending that the distance between the eastern house and the edge of the tank is only 4 ft., it is for the first respondent to ensure the maintenance of the said distance as per rules and he shall give necessary instructions to the sixth respondent to arrange the pit in which the tank is being kept at the distance prescribed from the wall of the eastern dwelling house. Since the sixth respondent obtained all necessary permissions, the petitioners are not entitled to stall the functioning of the petroleum outlet on any of the grounds mentioned supra.

11. Though the petitioners mentioned that there are High Tension Electric wires passing through the land, the photographs filed by the petitioners are not indicating the existence of such lines, therefore, there is no force in the contention of the petitioners that High Tension Wires are passing through the premises in question.

12. In the light of the aforesaid findings, the first respondent is directed to inspect the premises of the outlet and if the underground tank is at a distance as directed by the Fire Services authorities, the sixth respondent can be permitted to undertake the sales, but if the distance

between the wall of the eastern dwelling house to the eastern edge of the tank is not according to the Rules, the first respondent is directed to ensure the sixth respondent to maintain the said distance and then permit the sixth respondent to proceed with the sales. The sixth respondent is entitled to undertake the sales only after obtaining clearance from the first respondent in writing regarding the distance from the wall of the dwelling house situated on east to the eastern edge of the underground tank. He is not entitled to operate the petroleum outlet till he obtains the above clearance from the first respondent to the effect that he satisfied Condition No.3 of the permission granted by the Fire Services Department dated 2-3-2004. The writ petition is disposed of with the above directions.

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(Dr.G. Yethirajulu, J)

10th November 2004

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The General Manager, Bharat Petroleum Corporation Ltd.,
4 and 6 Curriumbhoy Road, Ballad Estate,
Mumbai-400001. (OPUC)
2 The District Collector, Chittoor District
3 The District Revenue officer, Chittoor.

4 The Revenue Divisional officer, Madanapally.
5 The Mandal Revenue Officer, Ramasamudram, Chittoor District.
6 Mr.C.M.Ramesh Kumar, S/o.C.Subbaiah,
R/o.Main Road, Near Checkpost,
Ramasamudram (V&M) Chittoor District (OPUC)

7 Mr.P.R. Prasad, Advocate (OPUC)

8 Mr.P.V. Sanjay Kumar, Advocate (OPUC)

9 Mr.C.A.R. Seshagiri Rao, Advcoate (OPUC)

10 2 CD copies

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